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Nos. 14-556, 14-562, 14-571, 14-574
(Consolidated)

IN THE

Supreme Court of the United States

JAMES OBERGEFELL, *et al.*,

Petitioners,

v.

RICHARD HODGES, DIRECTOR,
OHIO DEP'T OF HEALTH, *et al.*,

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF *AMICI CURIAE*
MIKE HUCKABEE POLICY SOLUTIONS
And, FAMILY RESEARCH INSTITUTE

IN SUPPORT OF RESPONDENTS

Jeffrey S. Wittenbrink
Counsel for Amici Curiae
5157 Bluebonnet Blvd.
Baton Rouge, Louisiana 70809
(225) 293-8787

QUESTIONS PRESENTED

These consolidated cases together present the following questions:

1) Does the Fourteenth Amendment require a state to license a marriage between two people of the same sex?

2) Does the Fourteenth Amendment require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state?

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STATEMENT OF IDENTITY AND INTERESTS OF AMICI CURIAE[1]

Mike Huckabee Policy Solutions (MHPS) is a non-profit corporation based in Colorado formed for educational and advocacy purposes and backed by private citizens and organizations who support the national policy aims of Mike Huckabee, former Governor of Arkansas, such as:

IRS Abolition: Replace the Income Tax and an abusive, scandal-ridden agency with the Fair Tax (a national sales tax). Foster personal liberty, privacy, productivity and a high-growth economy instead of scrutinizing, taxing and diminishing American wages.

Debt-Limit Embargo: No further increase in the National Debt (and over $200 trillion in unfunded liabilities) so long as U.S. funds flow to subsidize anti-Semitism, abortionists, LGBT wedlock,

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[1] Pursuant to Supreme Court Rule 37.3, all respondents have given blanket consent to the filing of this brief, and all appellants have specifically consented to the filing of this brief, a copy of which consent is filed in the record of this matter. Further, pursuant to Rule 37.6, counsel for *amici curiae* state that no counsel for a party authored this brief in whole or in part, and that no person other than *amici curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

mandated conscience violations, border lawlessness and other evils.

- Standing with Israel: Islamist expansionism in the Middle East and globally must be held in check by a U.S.-Israeli-Western Alliance working to thwart Iranian nuclear capacity, any Islamist "Two-State Solution," ISIS barbarism, ethnic-religious persecution and various National Security vulnerabilities such as EMP (electromagnetic pulse) threats to the North American electricity grid.

Protect Public Health and repeal the Affordable Care Act (Obamacare), which restricts medical options, mandates religious conscience violations and IRS-enforced penalties, raided $700 billion from the Medicare Trust Fund and fuels the National Debt via yet another unaffordable federal entitlement.

End Judicial Supremacy: The errant doctrine that the First Branch and Second Branch of the U.S. Government must obey any and every decree of the Third Branch, no matter how plainly absurd, evil or anti-Constitutional it may be (see below).

Mike Huckabee was the 44th Governor of Arkansas (1996–2007), named one of *Time*'s top five governors, honored as one of *Governing* magazine's "Public Officials of the Year," and given the American Public Health Association's "Distinguished Public Health Legislator of the Year" Award.

As a 2008 Presidential candidate, he won the Iowa Republican caucuses and finished second in delegate count and third in both popular vote and number of states won. The author of several *New York Times* bestselling books, Gov. Huckabee hosted a highly-rated public affairs television show for six years, ending it in January, 2015 to explore a possible 2016 Presidential candidacy.

Some of Gov. Huckabee's articulated positions relevant to the case at bar, and shared by MHPS, have been included in a public letter of June 25, 2013 to U.S. House Speaker John Boehner, sent the day before this Court opined in *Windsor v. United States* and *Hollingsworth v. Perry*, in which Gov. Huckabee urged the Speaker to wield Article One Congressional "Power of the Purse" to thwart any decree by this Court against the authority of the First Branch and Second Branch to uphold natural marriage via the Defense of Marriage Act, or against the authority of States to confine lawful marriage to one man and one woman. That letter said in pertinent part,

> SCOTUS has neither Constitutional right nor power to compel Congress to appropriate a single dime for same sex marriage benefits.... Nor can SCOTUS compel Congress to start debt-financing iron-fist federal enforcement of an

> invisible and non-existent right to nullify 37 state constitutions or statutes upholding Natural Law and One-Man, One Woman Marriage.... SCOTUS may opine all it wants that it's unfair that homosexuality, polygamy, or transgenderism are not favored by U.S. public policy or DOMA in the way that One-Man, One-Woman marriage is favored, but it cannot compel Congress to debt-finance LGBT or any other kind of marital benefits. The Court can opine, but Congress can decline... to fund it.[2]

Gov. Huckabee's message to the House Speaker added that,

> by embracing popular myths, the Supreme Court has been catastrophically wrong before in such errant opinions as *Dred Scott* (African-Americans not citizens), *Plessy v. Ferguson* (racist "separate but equal" doctrine), *Buck* (forced eugenic sterilization of the disabled); *Korematsu* (Japanese Americans herded into concentration camps); *Kelo* (seizing

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[2]Accessed from http://static1.squarespace.com/static/543ea028e4b052f9d5378cdc/t/5444f87ee4b02d01b176181f/1413806221332/Huckabee+to+Boehner+June+25+2013+-+FINAL.pdf

> citizens' homes for the benefit of private real estate developers); *Roe v. Wade* and *Doe v. Bolton* (federal imposition of abortion for all of gestation, trumping protections for unborn Americans in 50 states), and *NFIB v. Sebellius* (re-labeling an express penalty as a "tax" to rescue an unconstitutional federal mandate upon individual citizens).[3]

On June 19, 2014, Gov. Huckabee gave a Capitol Hill speech in which he said:

> The Constitution makes it very clear that the ultimate authority in our system of government is not a Supreme Court, nor is it a President, nor is it 535 legislators. The ultimate authority is the People, bound together by the document of the Constitution.... In over 32 states where the People have decided this issue, they have decided to affirm traditional marriage.... When you hear that the trend is moving [toward gay marriage], keep in mind that it is not a trend of the People; it is a trend of the courts.... we are living with the greatest heresy of our time, and I am talking about judicial supremacy. There is

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[3] ibid.

> nothing in the Constitution that gives the Judicial Branch the right to consider itself above the People, above the Constitution, above the Executive and the Legislative Branches.... There is no responsibility for the Executive and Legislative Branches to capitulate their powers, that are equal, to a Judicial Branch that has decided that it somehow has taken upon itself the role, the right, the responsibility of all three branches.... Judicial supremacy is a curse upon this great republic.[4]

In September, 2014, Gov. Huckabee endorsed a vow by Members of Congress to withhold authorizing any increase in the national debt limit

> until the termination of all federal expenditures for the subsidization, support, imposition or U.S. enforcement of such evils as.... The defining of polygamy, polyandry or same-sex union as "marriage" pursuant to any judicial decree, settlement or governmental measure affecting any of the 47 States which have not, as of 2014, authorized such definition by constitutional popular vote of the People in a binding

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[4] Accessed from www.youtube.com/watch?v=FAdAHPgt9JE

> Statewide initiative, referendum or plebiscite.[5]

On March 25, 2015, Gov. Huckabee's responded along with six other potential Presidential candidates to a journalist's specific question on the notion of judicial supremacy:

> Judicial supremacy is a Constitutional cancer. It has been used to turn the Supreme Court into the Supreme Being and remarkably, even elected Governors, Senators, and Congressman as well as attorneys and judges who should know better raise the white flag of surrender because they equate a court ruling with "the LAW OF THE LAND!"....
> Capitulation to unelected judges is surrender to the "children of a lesser god." When the courts attempt to create law that defies "the laws of nature and nature's God," the other branches not only have the right to defy it, but the responsibility to defy it, much as did Lincoln with the indefensible *Dred Scott* decision of 1857. An elected official hiding behind a judicial fiat without basis in law or common sense by declaring a court decision is the "final" word, or saying "that settles it" has

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[5] Accessed from http://static1.squarespace.com/static/543ea028e4b052f9d5378cdc/t/54b6d5aee4b071c8f270f748/1421268398595/THE-LIFE-MARRIAGE-CONSCIENCE-ISRAEL-VOW-atym.pdf

> not merely weakened his or her own branch of government, but has weakened the very Constitutional basis of our laws.[6]

MHPS is neither authorized, funded, directed nor controlled by Gov. Huckabee; it is an independent entity which advocates in Washington, D.C. and nationwide for his articulated policies and which generates ideas consistent with them for consideration by leaders of the Legislative, Executive and Judicial Branches of the U.S. Government. MHPS believes that the articulated positions of former Governor Huckabee should inform the Court's final opinion in this matter in order to protect public health, avoid the redefinition of marriage and protect the legitimacy of this Honorable Court.

Furthermore, certain scientific facts have been lost in this debate. Irrespective of constitutional separation of powers is the substantive matter of the harms which a majority of this Court would bring upon American young people and U.S. public health by effectively decreeing, via the cases at hand, the nationalization and normalization of LGBT unions. Therefore the second amicus curiae herein is the Family Research Institute (FRI), a non-profit

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[6] Accessed from https://www.conservativereview.com/commentary/2015/03/exclusive-huckabee-paul-and-rubio-on-the-judiciary-pt2

scientific and educational organization founded in 1982 and led by chief scientists Drs. Paul and Kirk Cameron. It conducts and publishes empirical research on drug abuse, HIV-AIDS, the safety of the U.S. blood supply, sexual social policy and public health. FRI works to produce sound, scientific data on pressing social issues--especially homosexuality—in an effort to promote sound policies.[7]

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[7] FRI's chief scientists have long been at the cutting edge of social policy research. Dr. Paul Cameron is recognized by the U.S. government as the investigator who first demonstrated the effects of secondhand tobacco smoke upon the health of resident children and spouses. He performed groundbreaking research on the social-psychological correlates of obtaining abortions, taking human life, and pet ownership. At the height of the AIDS crisis, Dr. Cameron was instrumental in recommending the ban instituted by the FDA on blood donations from males with current or previous homosexual experience. And he has served as a medical and social-psychological expert in numerous court cases across the country, including dozens of child custody cases involving a homosexual parent. Relevant to the current case, FRI has published — unchallenged in the professional literature — three different peer-reviewed articles proving scientific malfeasance on the part of the *American Psychiatric Association* (APA), the *American Psychological Association* (APA), the *National Association of Social Workers* (NASW), the *National Education Association* (NEA), and other professional organizations in their assertions about homosexuality and/or homosexual parenting. See P. Cameron & K. Cameron K *Did the APA misrepresent scientific material to the U.S. Supreme Court?* 63, Psychological Reports, 255–70 (1988); P. Cameron, et al. *Errors by the American Psychiatric Association, the*

In *United States v. Windsor*, 123 S.Ct. 2675 (2013), Justice Kennedy wrote for the majority that "no legitimate purpose overcomes the purpose and effect to disparage and to injure" gay individuals by a law which favors male-female monogamy.[8] Justice Kennedy is apparently unaware of the strong scientific linkage that has been documented between same-sex marriage and early mortality. These scientific facts have been generated and published by researchers *across the ideological spectrum*, including amicus FRI herein. As a friend of this Court, MHPS respects its opinions and yet, along with Gov. Huckabee and his public statements, absolutely rejects the notion of its unchecked supremacy over the First and Second Branches of the

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American Psychological Association, and the National Educational Association in representing homosexuality in amicus briefs about Amendment 2 to the U.S. Supreme Court, 79, Psychological Reports, 383–404 (1996); P. Cameron & K. Cameron *Did the APA misrepresent the scientific literature to courts in support of homosexual custody?* 131, Journal of Psychology, 313–32 (1997). Both Paul and Kirk Cameron serve as professional peer-reviewers for scientific journals, including submissions on homosexuality. And according to the National Library of Medicine and its online compilation of published medical and psychological research (PubMed), both are listed among the top researchers in the world on homosexuality in terms of number of published citations.

[8] *United States v. Windsor*, 133 S. Ct. 2675, 2696, 570 US 12, 186 L. Ed. 2d 808 - Supreme Court, 2013

Federal Government—each of which have an independent oath-bound duty to interpret, defend and uphold the Constitution, especially in the monumental matter of LGBT wedlock.[9]

Therefore, MHPS and FRI respectfully offer the Court documentation of the observed scientific facts. They further ask this Court, taking the following data and studies into account, to side with Hippocrates and "Do No Harm" by way of its pending opinions on same-sex marriage. Finally, as they believe Gov. Huckabee would say if he were an amicus herein himself, Mike Huckabee Policy Solutions and Family Research Institute beseech this Court to show true compassion and kindness for the benefit of millions of American young people, who, as a function of behavioral and lifestyle choices encouraged by unwise or uncaring public policy decrees, would otherwise die early.

SUMMARY OF THE ARGUMENT

Recently, the Alabama Supreme Court in *Ex parte State of Alabama ex rel. Alabama Policy Institute v. King*, 1140460, October term, ___ So. 2d ____ (Ala. 3/10/2015)[10], concluded that Alabama had

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[10] This decision is not yet reported in the Southern Reporter

the constitutional authority to proscribe same-sex marriages, as did the court of appeals in *DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. 2014). These courts both found a rational basis to define marriage as limited to one man and one woman. Similarly, even Justice Kennedy in the *Windsor* opinion noted:

> "It seems fair to conclude that, until recent years, many citizens had not even considered the possibility that two persons of the same sex might aspire to occupy the same status and dignity as that of a man and woman in lawful marriage. For marriage between a man and a woman no doubt had been thought of by most people as essential to the very definition of that term and to its role and function throughout the history of civilization."

___ U.S. at ___, 133 S.Ct. at 2689 (also noting that "[t]he limitation of lawful marriage to heterosexual couples ... for centuries had been deemed both necessary and fundamental," id.).

But, lost in the debate over the authority of individual States to define marriage in this manner are certain scientific facts. Irrespective of constitutional separation of powers is the substantive matter of the harms which a majority of this Court would bring upon American young people and U.S. public health by successfully decreeing the

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advance sheets.

normalization of homosexual unions via the cases at bar. A rational basis thus exists for defining marriage in the traditional sense.

The law has recognized broad powers of the States to govern public health, sometimes with drastic measures. See, *Gibbons v. Ogden*, 22 U.S. 1 (1824), 22 U.S. 1 (Wheat.); (allowing quarantine as a legitimate exercise of the police power) and *Jacobson v. Massachusetts,* 197 U.S. 11 (1905)(allowing compulsory vaccination against smallpox, confirming the power to quarantine, and allowing states to form regulatory bodies dealing with public health.)

Public health is regulated by the government for two overriding purposes: (1) to protect the health of individuals who might otherwise engage in self-harming activities, and (2) to protect the health of others who might be affected or endangered by such individuals and their behavior. Examples of these principles are seen in seat belt laws for drivers and passengers, laws banning smoking in public places, restrictions on narcotic drug use, public health campaigns that discriminate against unprotected sex, penalties for child sexual abuse, etc.

Many professional organizations have posited that laws against same-sex marriage should be ruled unconstitutional since homosexuality is not a public health risk, but rather "a normal expression of human sexuality" in which "gay and lesbian people form stable, committed relationships that are equivalent to heterosexual relationships in essential

respects; and that same-sex couples are no less fit than heterosexual parents to raise children..."[11]

However, significant empirical evidence — much of it compiled and published by LGBT-sympathetic researchers and homosexuals — challenges the (often politicized) contention that homosexual behavior does not endanger public health. Some of the best evidence was recently published in Oxford University's *International Journal of Epidemiology*, in a study of Danish gay and straight marrieds by LGBT-sympathetic epidemiologists.

From that source and others, consistent evidence indicates that individuals who engage in homosexuality experience significantly higher mortality rates than those who do not. Further, that elevated mortality risk is present both in married/partnered as well as single/unpartnered homosexuals. Significant mortality risk among married/partnered LGBT individuals undermines the argument that same-sex marriage will benefit either

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[11] Brief Of The American Psychological Association, The American Medical Association, The American Academy Of Pediatrics, The California Medical Association, The American Psychiatric Association, The American Psychoanalytic Association, The American Association For Marriage And Family Therapy, The National Association Of Social Workers And Its California Chapter, And The California Psychological Association As Amici Curiae On The Merits In Support Of Affirmance, Hollingsworth v. Perry, No. 12-144 (2013), at 4.

the partners in such unions or children who reside with them. Complementary to, but apart from, the strong social science evidence that children do best when raised by their biological mother and father in the same household,[12] early death among LGBT parents imposes financial, emotional, and health burdens on survivors and society, similar to the impact of divorce or early widowhood.

Additional scientific evidence demonstrates that homosexuality is not an immutable, inherited characteristic of an individual such as race, eye color, Down Syndrome, or sex. Rather than being an innate, genetically determined trait, the empirical evidence indicates that homosexuality is an acquired behavior, preference, or self-identification. In fact, a large fraction of those who engage in homosexual behavior also admit to past or present heterosexual involvement and/or desires, and patterns of homosexual expression are strongly influenced by cultural factors. Many individuals who identify as

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[12] See e.g., S. McLanahan & G. Sandefur, Growing Up with a Single Parent 38 (1994); M. Coleman et al., *Reinvestigating remarriage: another decade of progress*, 62, Journal of Marriage & Family 1288 (2000); K.A. Moore et al., *Marriage from a child's perspective: how does family structure affect children, and what can we do about it?*, Child Trends Research Brief 1-2, 6 (2002), www.childtrends.org/wp-content/uploads/2002/06/marriagerb602.pdf; M.V. Flinn et al., *Growth and fluctuating assymetry of stepchildren*, 20, Evolutionary Human Behavior 465 (1999); N.H. Wolfinger, Understanding the Divorce Cycle: The Children of Divorce in Their Own Marriages (2005).

gay during one portion of their lives abandon it in other portions.

Taken together, prohibitions against same-sex marriage do not "unfairly stigmatize same-sex couples"[13] because: (1) science indicates that homosexuality is neither an inborn trait, nor an immutable behavior, nor an inevitable expression of one's sexuality; (2) the practice of homosexuality is a public health risk leading to early mortality and endangerment of others; and (3) behaviors that risk public health should not be encouraged by law. Kindness and compassion toward those who smoke, abuse drugs, are suicidal, do not wear seat belts, etc. — as well as toward their loved ones and wider society — dictate that these behaviors be discouraged by law. The same reasoning should apply to any inclination by this Court to federally-decree the normalization of any form of marriage — including homosexual unions — other than that between one man and one woman.

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[13] Brief Of The American Psychological Association, The American Medical Association, The American Academy Of Pediatrics, The California Medical Association, The American Psychiatric Association, The American Psychoanalytic Association, The American Association For Marriage And Family Therapy, The National Association Of Social Workers And Its California Chapter, And The California Psychological Association As Amici Curiae On The Merits In Support Of Affirmance, Hollingsworth v. Perry, No. 12-144 (2013), at 34.

ARGUMENT

I. Homosexuality and same-sex marriage are tied to early death.

Early mortality is often an indication of poor health and/or an unhealthy lifestyle. Smoking, drug abuse, obesity, and divorce are all examples of behaviors — some chronic and habitual — documented to reduce average life expectancy by two to several years. Because of this reduction in longevity, along with attendant health complications, each of these behaviors is discouraged and discriminated against by law and/or custom. Indeed, behaviors leading to early mortality are often classified as public health risks.

Empirical evidence demonstrates that homosexual behavior — especially chronic or habitual practice — is likewise associated with early mortality. The most extensive study of this association was conducted by LGBT-sympathetic epidemiologists, published in Oxford University's *International Journal of Epidemiology* in 2013.[14] They computed relative mortality risks for a cohort of 6.5 million adults residing in Denmark between 1982 and 2011, including ~6000 men and women in registered same-sex partnerships, the Danish

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[14] M. Frisch & J. Simonsen, *Marriage, cohabitation, and mortality in Denmark: national cohort study of 6.5 million persons followed for up to three decades (1982-2011)*, 42, Intl. J. Epidemiology 559-78 (2013)

equivalent of gay marriage. Altogether, 1.7 million deaths were recorded and analyzed, covering nearly 30 years.

The authors noted: "Our study expands century-old knowledge that [heterosexually] married people generally have lower mortality than unmarried and divorced persons."[15] Yet the protective health benefits of marriage did not extend to same-sex partnerships: "In 2000-2011, opposite-sex married persons (reference, HR = 1)[16] had consistently lower mortality than persons in other marital status categories in women (HRs 1.37–1.89) and men (HRs 1.37–1.66). Mortality was particularly high for same-sex married women (HR = 1.89), notably from suicide (HR = 6.40) and cancer (HR = 1.62),..."[17]

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[15] Ibid. at 13.

[16] HR = hazard ratio, a comparison of estimated hazard rates between two groups, statuses, etc. The hazard rate in this study measures the instantaneous risk of death at a given age.

[17] Ibid. at 1. While Frisch & Simonsen emphasized the recent drop in relative mortality risk among married gay men, i.e. "whereas rates for same-sex married men (HR = 1.38) were equal to or lower than those for unmarried, divorced and widowed men" that risk was always significantly greater than the risk among married heterosexual men throughout the study period. They also found "Mortality was markedly elevated among persons in same-sex marriage in the first decade after its introduction in 1989. Since the year 2000, mortality among same-sex married women has remained higher than in all other marital status categories..." (p. 4). Also, "For men, widowers and those in same-sex marriage

Since Denmark was the first country in the world to legalize homosexual partnerships in 1989, it provides the longest-running direct experience of the impacts of gay marriage, in a country amenable to gay rights. Between 2000 and 2011, 669 deaths were recorded among same-sex partners, more than 10% of the same-sex married cohort. In very broadly-specified age categories, median ages of death for married lesbians and married gays were both between 50 and 69,[18] as opposed to at least the upper 70s for married or widowed heterosexuals. 23% of married lesbians died before the age of 50; 70% before the age of 70. Likewise, 20% of married gays died before the age of 50; 67% before the age of 70. Among married or widowed heterosexuals, only 2% of women and 2.5% of men died prior to age 50, and only 17% of women and 25% of men prior to age 70.

During the first 13 years of homosexual marriage in Denmark, official deaths among registered same-sex partners included 561 gays and 91 lesbians. Mean age at death from all causes was 51 for ever-partnered gays and 56 for ever-partnered lesbians. 22% of gay deaths and 24% of lesbian deaths survived to age 65+. By comparison, for ever-married Danish men and women, the mean age at

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had the highest HRs below age 50 years. However, above that age same-sex married men experienced the lowest mortality among all groups of men who were not in opposite-sex marriage." (p. 4)

[18] Ibid. Table 2, at 8.

death was 74 for men and 78 for women, with 79% and 85% of these deceased, respectively, surviving to age 65+.[19]

II. U.S. empirical data are consistent with Danish experience of early mortality among married homosexuals.

The U.S. has no registry of same-sex marriages or partnerships, so mortality among U.S. homosexuals (married or otherwise) must be estimated by other means. Populations that are hard to identify or access have been studied via obituaries in trade journals or newspapers.[20] Several large systematic sets of obituaries from homosexual publications have been compiled since 1980. Tests of obituaries published between 1993 and 2000 showed close correspondence between obituaries and national statistics for typical age at death from AIDS

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[19] Official death tables accessed by permission from *Statistics Denmark*, www.statbank.

[20] *See* J.A. McDonald, F.P. Li, & C.R. Mehta, *Cancer among beekeepers*, 21, J. Occupational Medicine, 811-13 (1979); A. Blair, *Mortality among workers in the metal polishing and plating industry*, 22, J. Occupational Medicine, 158-62 (1980); A. Blair & H.M. Hayes, Jr., *Mortality patterns among US veterinarians, 1947-1977: an expanded study*, 11, Intl. J. Epidemiology, 391-97 (B.A. Miller, A. Blair, & M. McCann, *Mortality patterns among professional artists: a preliminary report*, 6, J. Environmental Pathology and Toxicological Oncology, 303-13 (1985); J.S. Samkoff, S. Hockenberry, L.J. Simon, & R.L. Jones, *Mortality of young physicians in the United States, 1980-1988*, 70, Academy of Medicine, 242-4 (1995).

among men-who-have-sex-with-men (MSM).[21] Further, homosexual obituaries also exhibit similar patterns of child-rearing among gays and lesbians compared to recent national surveys and past surveys of the gay community, lending credence to their utility for estimating mortality experience.[22]

Obituaries from during and after the height of the HIV/AIDS epidemic:

(1980-1993) 6,574 gay and 163 lesbian obituaries from 18 homosexual publications: median age at death for gays was 39 if from AIDS, 42 if from other

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[21] P. Cameron & K. Cameron, *Gay obituaries closely track officially reported deaths from AIDS*, 96, Psychological Reports, 693-97 (2005)

[22] Among 1,388 consecutive Washington, DC obituaries published between 1988-1993 [P. Cameron & K. Cameron, *Homosexual Parents*, 124, Adolescence, 757-76 (1996)], 6% of the gays and 29% of the lesbians were listed as having children. Similarly, 6% of gays and 20% of lesbians in a systematic sample of ~1,550 San Francisco on-line gay homosexual obituaries from 2000-2014 were reported as parents [accessed from http://obit.glbthistory.org, *Bay Area Reporter, GLBT Historical Society*, online searchable obituary database. The NHIS 1997-2013 national probability sample of ~1.6 million persons included 1387 male couples, of which 176 (12.7%) were raising children, and 1384 female couples, of which 406 (29.3%) were raising children [D.P. Sullins, *Emotional problems among children with same-sex parents: difference by definition*, 7, British J. Education, Society, and Behavioural Science, 99-120 (2015); One of the largest-ever volunteer samples of homosexuals (4329 gays, 962 lesbians) reported that 13% of gays and 18% of lesbians had children [K. Jay & A. Young, The Gay Report, at 79 and 133 (1979)].

causes. Only 1% of AIDS deaths and 9% of non-AIDS deaths survived to at least age 65. Lesbian obituaries had a median age at death of 44 and 20% survived to age 65+.[23]

(1993-1997) 1,027 gay and 30 lesbian obituaries from the *Washington Blade*: median age at death for gays was 39 if from AIDS, 45 if from other causes. Less than 1% of AIDS deaths and 10% of non-AIDS deaths survived to age 65+. Median age at death for lesbians was 44 and 20% survived to age 65+.[24]

Recent obituaries:

(2000-2014) 1,461 gay and 91 lesbian obituaries from *Bay Area Reporter* in San Francisco: median age at death was 54 for gays and 56 for lesbians; 24% of deceased gays and 33% of deceased lesbians survived to age 65+.[25]

(2010-2014) 50 gay and 4 lesbian obituaries from *Washington Blade* in Washington DC: median age at death was 55 for gays and 63 for lesbians; 30% of deceased gays and 50% of deceased lesbians survived to 65+.

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[23] P. Cameron, W.L. Playfair, & S. Wellum, *The longevity of homosexuals: before and after the AIDS epidemic*, 29, Omega J. of Death and Dying, 249-71 (1994).

[24] P. Cameron, K. Cameron, & W.L. Playfair, *Does homosexual activity shorten life?*, 83, Psychological Reports, 847-66 (1998).

[25] *Bay Area Reporter*, *supra* note 10.

Comparison to national longevity statistics: current life expectancy in the U.S. is 77 for men and almost 82 for women; in 2013, 67% of U.S. deceased men and 80% of U.S. deceased women survived to age 65+.[26]

The effect of partnering on mortality experience:

Those listed as ever having a homosexual partner in recent *Bay Area Reporter* obituaries died slightly *younger* on average than those with no mentioned partner. Partnered gays in the most recent small *Washington Blade* sample died slightly older than unpartnered gays, but only by an average of four years (56 vs. 52.5). In older obituary samples, gays and lesbians with long-term partners died on average slightly *younger* than those without such partners, by about two years. Overall, even as the risk of early mortality in Denmark among married homosexuals has been either greater than or similar to divorced or widowed heterosexuals — which in turn is significantly greater than mortality risk in married heterosexuals — the U.S. data to date show no "marriage benefit" to homosexual unions in terms of lower mortality.

III. Empirical science indicates that LGBT behavior/identification is neither inborn nor immutable.

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[26] Accessed from www.wonder.gov.

For most people, homosexual desire is a foreign concept. Not only does it seem strikingly different from their own experience, but pro-LGBT scholars and activists regularly assert that "no one" would "choose" to be part of an ostracized minority. Since strong majorities of a recent sample of gays and lesbians claimed that "choice" had little to do with their sexual orientation,[27] it is understandable why many would believe homosexuality to be inborn. Yet several lines of empirical evidence do not support this belief:

Twin studies do not show that homosexuality is inborn. In 1991, two researchers found that 52% of identical twins of a sample of homosexuals were also homosexual, leading to speculation that homosexuality is genetically determined since identical twins share a very similar genetic makeup.[28] Several follow-up studies, however, found a wide range of concordance rates (i.e., similarity across pairs) for homosexuality among identical twins, some as low as 0%, with *lower* concordance the larger and more representative the sample.[29]

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[27] G. Herek et al., *Demographic, psychological, and social characteristics of self-identified lesbian, gay, and bisexual adults in a US probability sample*, 7 Sexuality Research & Social Policy 176-200 (2010).

[28] J.M. Bailey & R.C. Pillard, *A genetic study of male sexual orientation*, 48, Archives General Psychiatry, 1089-96 (1991)

[29] *See* M. King & E. McDonald, *Homosexuals who are twins: a study of 46 probands*, 160, British J. Psychiatry, 407-19 (1992) W. Byne & B. Parsons, *Human sexual orientation: the biologic theories reappraised*, 50, Archives General Psychiatry 228-39

Researchers from Columbia and Yale concluded from an extensive analysis of both opposite-sex and identical twins that "the pattern of concordance (similarity across pairs) of same-sex preference for sibling pairs does not suggest genetic influence independent of social context."[30]

The purported X-chromosome-linked "gay gene"[31] has not been replicated in follow-up studies.[32]

Researchers have yet to find provable, replicable biological or genetic differences linked to sexual orientation that could not have been either acquired or a result of their sexual behavior.[33]

(1993): Byne & Parsons noted the large proportions of identical twins in both studies "who were discordant for homosexuality despite sharing not only their genes but also their prenatal and familial environments... [which] underscores our ignorance of the factors that are involved, and the manner in which they interact, in the emergence of sexual orientation."; P.S. Bearman & H. Bruckner, *Opposite-sex twins and adolescent same-sex attraction*, 107, American J. Sociology, 1179-1205 (2002).

[30] Bearman & Bruckner, *ibid.* at 1179.

[31] D.H. Hamer, et al., *A linkage between DNA markers on the X-chromosome and male sexual orientation*, 261, Science, 321-27 (1993).

[32] G. Rice, et al., *Male homosexuality: absence of linkage to microsatellite markers at Xq28*, 284, Science, 665-7 (1999); Bearman & Bruckner, *supra* note 19 at 1186.

[33] *See* Byne & Parsons, *supra* note 19: Byne & Parsons noted that contrary to long-held scientific belief through the 1970s in the influence of hormones on homosexuality, only three "studies had indicated lower testosterone levels in male homosexuals, while 20 studies found no differences based on sexual orientation, and two reported elevated testosterone levels in

Before the modern gay rights movement and the "political correctness" surrounding homosexuality, two separate studies by pro-LGBT researchers from the Kinsey Institute involving 1700 and 979 homosexuals documented that most homosexuals self-attributed their sexual orientation to a combination of environmental, social, and learning-related factors. Only 10% of homosexual respondents claimed they were "born that way."[34]

Sexual conduct is influenced by cultural factors, including religious convictions, where one was born/raised, and parental marital status. In the 1940s, Alfred Kinsey reported "less homosexual activity among devout groups whether they be Protestant, Catholic, or Jewish, and more homosexual activity among religiously less active groups."[35] A 1983 national random sample found those raised in irreligious homes much more likely to

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male homosexuals." W. Byne & B. Parsons, *Human sexual orientation: the biologic theories reappraised*, 50, Archives of General Psychiatry 228-39 (1993); W. Byne, *The biological evidence challenged*, May, Scientific American 50-5 (1994 R.C. Friedman & J. Downey, *Neurobiology and sexual orientation: current relationships*, 5, J. Neuropsychiatry & Clinical Neuroscience 131-53 (1993).

[34] A.P. Bell, *Homosexualities: their range and character*, in Nebraska Symposium on Motivation Cole & Dienstbier (eds) Univ Nebraska Press (1973) King, *The Etiology of Homosexuality as Related to Childhood Experiences and Adult Adjustment* Ed.D. Thesis, Indiana Univ. (1980).

[35] A.C. Kinsey, et al., Sexual Behavior in the Human Male 483 (1948).

claim a homosexual orientation than those from devoutly religious homes.[36] A 1994 NORC nationwide probability survey found that three times as many men raised in large cities as opposed to rural areas had had a homosexual experience.[37] And a 2006 Danish study of over two million married homosexuals and heterosexuals found several socially-influenced correlates of sexual orientation, including: (1) urban-born individuals were much more likely to be in same-sex marriages than rural-born adults, with the reverse being true of those in heterosexual marriages, and (2) the longer one's parents had been married, the more likely that individual would get heterosexually-married and the less likely he or she would become same-sex married.[38] None of these differences would be expected if homosexuality was inborn and distributed evenly or at random throughout the populace.

Homosexual experience in children and teens is often initiated by older individuals,[39] and early

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[36] P. Cameron & K. Cameron, *Is homosexuality learned?*, April 15, Eastern Psychological Association (1994).

[37] E.O. Laumann, et al., The Social Organization of Sexuality: Sexual Practices in the United States (1994).

[38] M. Frisch & A. Hviid, *Childhood Family Correlates of Heterosexual and Homosexual Marriages: A National Cohort Study of Two Million Danes*, 35, Archives of Sexual Behavior, 533-47 (2006).

[39] See A.P. Bell & Weinberg, Homosexualities: A Study of Diversity Among Men and Women (1978); A.P. Bell, et al., Sexual Preference (& Statistical Appendix) (1981); Gebhard &

homosexual experiences are tied to later adult patterns of behavior. In fact, three separate studies found that the type of one's first sexual experience — both for males and females — strongly predicted adult homosexual behavior.[40] This evidence is consistent with a learning model of sexuality, where sexual expression is "handed down" from older to younger individuals.

Many persons change their sexual preferences or self-identification over time and the vast majority of those with adult homosexual experience also have had adult heterosexual experience. A national random sample found that of the small percentage of men and women *currently claiming homosexual desire*: 88% of women and 73% of men claimed sexual arousal by the *opposite* sex; 85% of women and 54% of men reported *opposite* sex relations in adulthood; 67% of women and 54% of men reported *current sexual attraction to the opposite sex*; and 82% of women and 66% of men claimed to have been "in love" with a member of the *opposite* sex.[41]

Johnson, The Kinsey Data: Marginal Tabulations of the 1938-63 Interviews Conducted by the Institute for Sex Research (1979); and I. Bieber, et al., Homosexuality: A Psychoanalytic Study (1962), where 60%, 64%, and 61% of the respondents claimed that their first partner was someone older who had initiated the sexual experience.

[40] *See* Van Wyk & Geist, *Psychosocial development of heterosexual, bisexual, and homosexual behavior*, 13, Archives Sexual Behavior 505-44 (1984); Bell, *supra* note 24; King, *supra* note 24; Cameron & Cameron, *supra* note 26.

[41] P. Cameron, K. Cameron, & K. Proctor, *Effect of*

Consistent with these findings, two nationwide random samples of 904 men asked about their sex lives since age 21. 5.2% reported any adult lifetime homosexual experience, but only 13% of these claimed sex exclusively with men.[42] The vast majority had sex, as adults, with both men and women. Another random sample of 687 currently heterosexual adults reported that 2.7% of the men and 1% of the women claimed to be "ex-homosexual."[43] None of these patterns would be expected if homosexuality were immutable or a fixed characteristic like race or sex.

IV. Therefore, science, public health, and responsible compassion toward American young people dictate that LGBT unions should neither be encouraged by this Court nor imposed upon States that aim to preserve traditional one man-one woman marriage as public policy.

The essential argument for this Court to decree same-sex marriage for all of the United States boils down to four points: (1) Some people are born

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homosexuality upon public health and social order, 61, Psychological Reports 1167-79 (1989).

[42] S. Roberts & C. Turner *Male-male sexual contact in USA: findings from five sample surveys, 1970-1990*, 28, J. Sex Research 491-519 (1991).

[43] P. Cameron & K. Cameron, *What proportion of heterosexuals is ex-homosexual?*, 91, Psychological Reports, 1087-97 (2002).

gay and that condition is immutable; (2) historically stigmatized, homosexuals and are no less fit for healthful longevity and parenting than heterosexuals;

(3) same-sex marriage is no different from heterosexual marriage in any essential way (but only in choice of partner), therefore (4) laws against same-sex marriage suppress the civil rights of LGBT individuals and are thus unconstitutional.

Even when the widely known, disproportionate health risks faced by homosexuals are acknowledged, they are invariably explained to be a result of stigma and prejudice. Pro-LGBT British scholars King and Bartlett summarized in 2005 that "Lesbians seem to have higher risk factors for breast cancer (nulliparity and higher alcohol intake) and cardiovascular disease (overweight and cigarette smoking) than heterosexual women, while gay men are at higher risk of acquiring sexually transmitted infections and HIV than straight men. Gay men and lesbians seem to have higher rates of anxiety, depression, substance use disorders, and suicidal behaviour than heterosexuals."[44] They attributed these health risks to the social stigma, prejudice, and censure homosexuals experience, and proposed that granting same-sex civil partnerships would "reduce discrimination, increase the stability

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[44] M. King & A. Bartlett, *What same sex civil partnerships may mean for health*, 60, J. Epidemiology & Community Health at 188-9 (2006)

of same sex relationships, and lead to better physical and mental health for gay and lesbian people."[45]

Empirical findings to date on same-sex partnerships, including the equivalents of marriage, do not support King and Bartlett's thesis. Both homosexual practice in general and same-sex partnering are a significantly greater mortality risk in the country (Denmark) with the longest-running experience with homosexual marriage (25 years). The same appears to be true in at least two major U.S. cities most accepting of homosexuality (San Francisco and Washington, D.C.).

Rather than a mere function of stigma or prejudice, there appear to be intrinsic differences between homosexual and heterosexual practice, and between same-sex and opposite-sex marriage; differences directly tied to greater morbidity and mortality among LGBT individuals and partnerships. Since empirical evidence does not support the claim that homosexuality is inborn or immutable, but *does* indicate that homosexual unions are associated with substantial personal and public health risk, such that same-sex marriage should not be imposed upon the States by this Court.

CONCLUSION

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[45] *Ibid.* at 188.

As with smoking or drug abuse, it would be neither compassionate nor kind to normalize and encourage a known and significant public health risk such as homosexuality. Heightened early mortality risk suggests that homosexual practice (whether in casual or long-term unions) is self-injurious and therefore would put undue financial, emotional, and health burdens on survivors, especially children, as well as society, pursuant to any normalization of same-sex marriage by decree of this Court.

In 47 of the United States, the People have yet to vote in favor of same-sex marriage, and about two-thirds of those States have rejected it by popular plebiscite. Contrary to rhetorical attacks from the sociopolitical Left and media allies, however, those American voters likely are not "Haters." In fact, they may intuitively understand scientific realities behind what recently got published – perhaps too late for due and appropriate consideration by this Court – in Oxford University's *International Journal of Epidemiology* : That LGBT unions are unhealthful relative to traditional marriage between a man and a woman.

Just as in the cases of drug abusers or suicidal individuals, it would not be compassionate nor kind of this Court to attempt to further normalize and encourage known and significant public health risks represented by LGBT lifestyles and unions. Thus, the expansion of LGBT activity by decree of this

Court is likely to proliferate undue financial, emotional, and health burdens upon survivors, especially children, and upon wider society as well.

Far from "hateful," the amici curiae herein hold that deference to the States in the regulation of lawful marriage, as well as federalist restraint and humility by this Court, would represent an act of love. "Tough love," perhaps, but love nonetheless.

Respectfully submitted,

Jeffrey S. Wittenbrink
Counsel for Amici Curiae
5157 Bluebonnet Blvd.
Baton Rouge, Louisiana 70809
(225) 293-8787